

105 KAR 1:150. Installment purchase procedures.

RELATES TO: KRS 16.645(20), 61.373, 61.377, 61.552(16), 61.552(28), 61.575, 78.545(35), 26 U.S.C. 414(h), 415, 29 U.S.C. 28, 38 U.S.C. 43

STATUTORY AUTHORITY: KRS 61.552(16), (28), 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. KRS 61.552(16) and 61.552(28) permits an employee participating in the Kentucky Retirement Systems to purchase service credit by payroll deducted installments. This administrative regulation establishes the process and forms related to this option, and provides for the preservation of installment purchases for military personnel called into service.

Section 1. Installment payment plans shall be allowed for the employees of an agency that has certified its agreement to deduct and remit installment payments on all employees participating in the Kentucky Retirement Systems. The certification shall be made on the "Form 7280, Employer Certification for Installment Purchase of Service," provided by the retirement system.

Section 2. (1) The retirement system shall calculate the monthly payment necessary to pay the cost of the service being purchased.

(2) The employee may select a payment period of not less than one (1) year and not more than five (5) years in accordance with KRS 61.552(16)(b).

(3) The retirement system shall provide to the employee a "Form 5708, After Tax Installment Service Agreement" and a "Form 5709, Before Tax Installment Purchase of Service Agreement." The employee shall complete and return to the retirement systems only one (1), but not both, of either the Form 5708, After Tax Installment Purchase of Service Agreement or the Form 5709, Before Tax Installment Purchase of Service Agreement. An employee shall not enter into more than one (1) installment purchase of service agreement at any given time.

(4) The agreement shall contain a space for selecting the payment option and an authorization for withholding the installment payments.

(5) The agreement shall provide a space for the employee to indicate the amount of any down payment to be made by the employee, whether by personal check or rollover or transfer of funds from a qualified retirement plan or deferred compensation arrangement.

(6) The monthly payment options offered to the employee on the Form 5708 After Tax Installment Purchase of Service Agreement shall not exceed the limitations for annual additional contributions in 26 U.S.C. 415.

Section 3. (1) Upon receipt of the completed and signed Form 5708, After Tax Installment Purchase of Service Agreement or the Form 5709, Before Tax Installment Purchase of Service Agreement, the retirement system shall notify the employee and employer of the amount of the installment payment, the date the payments shall begin, the date the payments shall end, and the total payments.

(2) If the employee is making a down payment by transfer or rollover from a qualified retirement plan or deferred compensation arrangement, the retirement system shall notify the employee and employer of the amount of the installment payments following receipt of the transferred or rolled over funds.

(3) An amortization schedule shall be sent to the employee.

(4) The Form 5708, After Tax Installment Purchase of Service Agreement or the Form 5709, Before Tax Installment Purchase of Service Agreement shall be rejected and a new calculation of

the cost of the purchase shall be performed if:

(a) The Form 5708, After Tax Installment Purchase of Service Agreement or the Form 5709, Before Tax Installment Purchase of Service Agreement is not filed at the retirement systems by the deadline for purchase of the service credit;

(b) The employee fails to fully and properly complete and sign the Form 5708, After Tax Installment Purchase of Service Agreement or the Form 5709, Before Tax Installment Purchase of Service Agreement;

(c) The employee indicates that a down payment is to be made, but the employee does not include the check or proof of eligibility to rollover or transfer funds from a qualified retirement plan or deferred compensation arrangement with the Form 5708, After Tax Installment Purchase of Service Agreement or Form 5709, Before Tax Installment Purchase of Service Agreement by the deadline for purchase of the service credit; or

(d) The employee fails to file a corrected Installment Purchase of Service Agreement within thirty (30) days of a recalculation of the cost to purchase.

(5) If the Form 5708, After Tax Installment Purchase of Service Agreement or Form 5709, Before Tax Installment Purchase of Service is rejected under subsection (4) of this section, any down payment shall be refunded to the member or, if rollover or transfer, returned to the qualified retirement plan or deferred compensation arrangement.

Section 4. (1) The employer shall remit the installments to the retirement system as required by the agreement, but shall be solely responsible for withholding sufficient amounts from the employee to allow the payment of the installments.

(2) The installments shall be remitted to the retirement systems only with the employer's contribution report. If the employee is not employed twelve (12) months each year, the agency shall withhold sufficient funds to allow the agency to remit the required deductions with the contribution reports during any months in which the employee is not paid.

(3) The retirement system shall not accept personal checks from the employee as payment for these deductions.

Section 5. (1) The amount required to purchase one (1) month of service credit shall be calculated by dividing the total of the installment payments due under the agreement by the number of months of service credit being purchased.

(2) Upon receipt of installment payments equal to this amount, the retirement system shall credit one (1) month of service credit to the member's account.

Section 6. (1) The employee shall notify the retirement system in writing if he desires to terminate the Form 5708, After Tax Installment Purchase of Service Agreement. Upon receipt of the notice from the employee, the retirement system shall notify the employee and his employer of the date to stop deductions.

(2) The employee may request a payoff amount for the Form 5708, After Tax Installment Purchase of Service Agreement. The employee shall have sixty (60) days from the payoff date, requested by the employee and agreed to by the retirement system, to pay the installment agreement in full by lump sum payment, but the payoff shall be made prior to the effective date of retirement. At the end of the due date of the contract, the contract shall be terminated and any payment received shall be credited for service, and any payment amount remaining that will not purchase the next month of service shall be refunded.

(3) The Form 5709, Before Tax Installment Purchase of Service Agreement shall be an irrevocable, binding agreement if properly and fully completed and signed by the employee, authorized by the employer, and accepted by the retirement systems.

Section 7. The retirement system may refuse to allow new installment agreements for employees of an agency which fails to deduct and remit the installment payments in accordance with Sections 1 through 10 of this administrative regulation.

Section 8. (1) If an employee leaves a position to perform military duty as provided in KRS 61.377, the employer shall advise the retirement system in writing or by appropriate personnel action that the employee is on active military duty, and the employee's installment purchase agreement shall be suspended during the period of military duty for which the employee does not receive creditable compensation from the employer.

(2) Upon return to employment as provided in KRS 61.373, the employee's installment purchase agreement shall not be recalculated and the employer shall resume remitting the remaining deductions unless the employee terminates the installment agreement as provided in Section 6 of this administrative regulation.

Section 9. Sick Leave Without Pay. (1) The employer shall advise the retirement system in writing or by appropriate personnel action that the employee is on sick leave without pay, and the installment purchase agreement of an employee placed on sick leave without pay shall be suspended during the period of sick leave without pay.

(2) Upon return to the employer from the period of sick leave without pay, the employee's installment purchase agreement shall not be recalculated. The employer shall resume remitting the remaining deductions unless the employee terminates the installment agreement as provided in Section 6 of this administrative regulation.

Section 10. (1) KRS 61.552(28) allows a member to purchase and reinstate credit under any of the provisions of KRS 16.510 to 16.652 and 61.515 to 61.705 and 78.520 to 78.852 in the retirement systems administered by the Kentucky Retirement Systems by making installment payments in lieu of a lump-sum payment by establishing an irrevocable employer pick-up of member contributions as described by 26 U.S.C. 414(h)(2).

(2) The cost of the service shall be computed in the same manner as for a lump-sum payment which shall be the principal; and interest compounded annually at the actuarial rate in effect when the member elects to make the purchase shall be added for the period that the installments are to be made. One (1) year of installment payments shall be made for each \$1,000 or any part thereof of the total cost, except that the total period allowed for installments shall not be less than one (1) year and shall not exceed five (5) years. Multiple service purchases shall be combined under a single installment purchase; however, an employee shall not make more than one (1) installment purchase at the same time. Once multiple service purchases have been combined in an installment purchase, the employee shall not separate the purchases or pay a portion of one (1) of the purchases.

(3) The employer shall pay the installments by payroll reduction. Upon notification by the retirement systems, the employer shall report the installment payments either monthly or semi-monthly continuously over each twelve (12) month period at the same time as, but separate from, regular employer contributions as provided in 105 KAR 1:140, Section 1(1). The employer shall pay the monthly reductions the employee elects to have applied to purchase service credit through pick-up contributions. The payroll reductions shall be paid to the Kentucky Retirement Systems through the normal State Treasurer Office remittance process, from the same source of funds that is used in paying earnings to the employees. The employer shall pick-up these contributions by a corresponding reduction in the cash salary of the employees. These contributions, although designated as employee contributions, shall be paid by the employer in lieu of contribu-

tions by the employee.

(4) An employee may elect to pay all or part of any contribution to purchase or reinstate service credit. An employee's election to purchase or reinstate service credit through pick-up contributions shall be pursuant to an irrevocable, binding written authorization on a Form 5709, Before Tax Installment Purchase of Service Agreement, which specifies the amount of the monthly payroll reductions and the period over which the payroll reductions shall be made. The pick-up shall not commence earlier than the month after the authorization is signed. The pick-up shall only be applicable to contributions to the extent the compensation which is reduced for the contributions is limited to compensation earned for services after the effective date of the pick-up. Once the employee enters into the irrevocable agreement, prepayments shall not be accepted for the purchase of the service that is subject to the irrevocable authorization, and the employee shall not receive the contributions directly instead of having the contributions contributed to the retirement system. However, an employee shall not be prevented from paying any amounts not covered by the authorization with after-tax dollars, subject to any applicable statutes and rules. An employee shall not have at any given time more than one (1) irrevocable reduction authorization.

(5) Contributions picked up as provided by subsection (4) of this section shall be treated as tax-deferred employer pick-up contributions pursuant to 26 U.S.C. 414(h). Based upon the Internal Revenue Service ruling that pursuant to 26 U.S.C. 414(h) these picked up contributions are not includable in the gross income of the employee until such time as they are distributed or made available, each employer shall not withhold federal income taxes on these picked up contributions.

(6) Employee contributions picked-up as provided by subsection (4) of this section shall be transmitted to the retirement systems and shall be credited to the employee's account and treated, for all other purposes, as if the amount were a part of the employee's annual compensation.

(7) All payroll reduction authorizations, including the amounts and duration specified, shall be binding and irrevocable upon the employee's execution of a Form 5709, Before Tax Installment Purchase of Service Agreement. These reductions shall cease only after the authorization has expired by its terms or upon any of the following events:

(a) The employee's death. If the death of an employee occurs, the employee's beneficiary shall have the option of paying the remaining amount owed by lump sum payment, using after-tax dollars, within sixty (60) days of the employee's death. If the balance is not paid, the beneficiary shall be entitled to receive credit for each one (1) month period of service purchased. The beneficiary shall receive any contributions of the employee which had already been made when the employee's death occurred and which were not used to purchase a one (1) month period of service credit only pursuant to the normal disbursement procedures for a member's accumulated contributions under KRS 61.575.

(b) The termination of the member's employment. If the member's employment is terminated, the member shall have the right to pay the remaining amount owed by lump sum payment on or within sixty (60) days of the member's termination of employment, but prior to the effective retirement date of the member. If the balance is not paid, the member shall be entitled to receive credit only for each one (1) month period of service actually purchased. The member shall receive any contributions which were not used to purchase one (1) month period of service credit pursuant to the normal disbursement procedures for a member's accumulated contributions under KRS 61.575.

(c) For purposes of subsection (7)(a) and (b) of this section, after-tax contributions shall only be received to the extent allowed by 26 U.S.C. 415.

(8) If the employee is on military leave or sick leave without pay, the installment purchase shall cease and shall be suspended during the period of leave and shall resume without recalculation upon the employee's return from leave.

(9) The employee shall not receive a return of the payroll reductions made under Sections 1

through 10 of this administrative regulation, except pursuant to the normal disbursement procedures for a member's accumulated contributions under KRS 61.575.

(10) Payroll reductions under this section shall not last longer than five (5) years.

(11) The retirement systems shall begin accepting before tax payroll reduction agreements from employees in February 2003. The earliest effective date for receipt of before tax contributions from employers shall be those payroll reports due in March 2003. An employee who has a current post-tax installment purchase of service agreement in place as of January 31, 2003 may terminate this purchase and make an election under this section to convert the installment purchase of service agreement to an irrevocable pretax employer pick-up of contributions before December 31, 2003.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form 7280, Employer Certification for Installment Purchase of Service, November 2002," Kentucky Retirement Systems;

(b) "Form 5708, After Tax Installment Purchase of Service Agreement, June 2003," Kentucky Retirement Systems; and

(c) "Form 5709, Before Tax Installment Purchase of Service Agreement, January 2003," Kentucky Retirement Systems.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. (18 Ky.R. 924; eff. 11-8-91; 19 Ky.R. 965; eff. 12-9-92; 21 Ky.R. 1519; eff. 2-8-95; 27 Ky.R. 1045; 1441; eff. 12-21-2000; 28 Ky.R. 1668; 2325; eff. 5-16-02; 29 Ky.R. 758; 1245; eff. 11-12-02; 2724; 30 Ky.R. 17; eff. 7-17-03.)